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11 SPECTRUM BRANDS, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 KUSHTRIM ZYMBERI, Individually
15 And On Behalf of All Others Similarly
16 Situated,

17 Plaintiff,

18 v.

19 SPECTRUM BRANDS, INC. a/k/a
20 RAYOVAC,

21 Defendant.

Case No.: 5:15-cv-02351-DDP-SPx

**STIPULATED PROTECTIVE
ORDER**

**[NOTE CHANGES MADE BY THE
COURT IN PARAGRAPHS 7 AND
14]**

Assigned to the Hon. Dean D.
Pregerson

GOOD CAUSE STATEMENT

The Court may enter a protective order upon a showing of good cause. *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1209 (9th Cir. 2002) (Rule 26(c)). Here, there is good cause for the entry of this protective order. Plaintiff Kushtrim Zymberi has filed claims of false advertising against defendant Spectrum Brands, Inc. (“Defendant”).

The Parties anticipate they will produce certain information and documents in this matter that are confidential or competitively sensitive, including Defendant’s confidential information that is relevant to the testing and marketing of the subject product, as well as damages. The use of such confidential information should be limited to this litigation. It should not be disclosed to the public as disclosure would be harmful to the parties. The purpose of this Protective Order is to provide a means for limiting access to and use and disclosure of such confidential documents or information that is produced in this action. Any unauthorized disclosure of confidential documents or information in violation of this Order may be subject to discipline by the contempt powers of this Court.

Based on the foregoing, the parties stipulate and the Court ORDERS as follows:

1. Any party to this litigation and any third party shall have the right to designate as “Confidential Material” and subject to this Order any information, document, or thing, or portion of any document or thing that (a) contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, (b) contains private or confidential personal information, (c) contains information received in confidence from third parties, or (d) the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure (“Confidential Material”). Any party or third party covered by this Order that produces or discloses any Confidential Material shall mark it with the following or a

1 substantially similar legend: “CONFIDENTIAL.”

2 2. Any party and third party shall have the right to designate as “Attor-
3 neys’ Eyes Only Material” and subject to this Order any information, document, or
4 thing, or portion of any document or thing that the designating party reasonably
5 believes is among that considered to be most sensitive by the party, including but
6 not limited to highly sensitive business or personal information, the disclosure of
7 which is highly likely to cause significant harm to an individual or to the business
8 or competitive position of the designating party. Any party to this litigation or
9 third party covered by this Order that produces or discloses any Attorneys’ Eyes
10 Only Material shall mark the same with the following, or a substantially similar,
11 legend: “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 3. Any Confidential or Attorneys’ Eyes Only Material produced in a
13 non-paper medium (*e.g.*, videotape, audiotape, computer disc) may be so
14 designated by labeling the outside of such non-paper medium, as appropriate, with
15 the following, or a substantially similar, legend: “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES.” In the event a receiving
17 party generates any electronic copy, hard copy, transcription, or printout from any
18 such designated non-paper medium, that party, and all persons subject to this
19 Order, must treat each copy as the original was designated and label it in a manner
20 consistent with this Order.

21 4. All designations of Confidential Material and Attorneys Eyes Only
22 Material shall be made in good faith and in accordance with Fed. R. Civ. P. 26
23 (c)(1)(G). The parties will use reasonable care to avoid designating as Confidential
24 or Attorneys Eyes Only documents or information that does not need to be
25 designated as such. To the extent possible or reasonably practical, the designating
26 party must designate for protection only those parts of material, documents, items,
27 or oral or written communications that qualify so that other portions of the
28 material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably with the ambit of this Order. Mass,
2 indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper purpose
4 (e.g., to unnecessarily encumber the case development process or to impose
5 unnecessary expenses and burdens on other parties) may expose the designating
6 party to sanctions. If it comes to a designating party's attention that information or
7 items that it designated for protection do not qualify for protection, that designating
8 party must promptly notice all other parties that it is withdrawing the inapplicable
9 designation.

10 5. All Confidential Material and Attorneys' Eyes Only Material shall be
11 used by the receiving party solely for purposes of the prosecution or defense of this
12 action, shall not be used by the receiving party for any business, commercial,
13 competitive, personal or other purpose, and shall not be disclosed by the receiving
14 party to anyone other than the persons set forth in paragraphs 6 and 7, unless and
15 until the restrictions under this Order are removed either by written agreement of
16 counsel or Court Order. Counsel may, however, give advice and opinions to his or
17 her client solely relating to this action based on an evaluation of Attorneys' Eyes
18 Only Material, provided that such advice and opinions shall not reveal the content
19 of such Attorneys' Eyes Only Material except by prior written agreement of
20 counsel or Court Order.

21 6. Confidential Material and the contents of Confidential material may
22 be disclosed only to the following individuals under the following conditions:

23 a. Outside counsel retained by the parties for this case and in-
24 house counsel for the parties working on this case;

25 b. Outside experts or consultants retained by outside counsel for
26 purposes reasonably related to the scope of an expert's work in this case, provided
27 they have signed a non-disclosure agreement in the form attached hereto as Exhibit
28 A;

1 c. Secretarial, paralegal, clerical, duplicating and data-processing
2 personnel working under the direct supervision of outside counsel, in-house
3 counsel, outside experts, or outside consultants described in paragraphs 6.a and
4 6.b;

5 d. The Court, jury, court reporters, and court personnel;

6 e. Any witness who is shown or examined about any Confidential
7 Material or Attorneys' Eyes Only Material, if it appears that the witness originated,
8 authored or received a copy of it, was involved in the specific subject matter
9 described therein, or is employed by the party who produced the Confidential
10 Material or Attorneys' Eyes Only Material, or if the producing party consents to
11 such disclosure;

12 f. Vendors retained by or for the parties to assist with respect to
13 pretrial discovery, trial, or hearings, including but not limited to court reporters,
14 litigation support personnel, jury consultants, persons preparing demonstrative and
15 audiovisual aids for use in court, in depositions, or mock jury sessions, as well as
16 their staff, stenographic, and clerical employees whose duties and responsibilities
17 require access to such materials;

18 g. An individual party or, in the event of a party that is a business
19 entity, the party's executives, officers, directors, managers, and employees with
20 whom outside counsel of record find it necessary to consult, in the discretion of
21 such counsel and in good faith, in preparing the action for trial or settlement and
22 who have been made aware of this Order and have agreed to abide by its terms;

23 h. As ordered by the Court, provided that such other persons have
24 signed a non-disclosure agreement in the form attached hereto as Exhibit A.

25 7. Material designated as Attorneys' Eyes Only Material may be
26 disclosed only to:

27 a. Outside counsel retained by the parties for this case and in-
28 house counsel for the parties working on this case;

1 b. Outside experts or consultants retained by outside counsel for
2 purposes reasonably related to the scope of an expert's work in this case, provided
3 they have signed a non-disclosure agreement in the form attached hereto as Exhibit
4 A;

5 c. Secretarial, paralegal, clerical, duplicating and data-processing
6 personnel working under the direct supervision of outside counsel, in-house
7 counsel, outside experts, or outside consultants described in paragraphs 7.a and
8 7.b;

9 d. The Court, jury, court reporter, and court personnel;

10 e. Vendors retained by or for the parties to assist with respect to
11 pretrial discovery, trial, or hearings, including but not limited to court reporters,
12 litigation support personnel, jury consultants, persons preparing demonstrative and
13 audiovisual aids for use in court, in depositions, or mock jury sessions;

14 f. Any witness who appears to have originated, authored or
15 received a copy of the information, and other persons as to whom outside counsel
16 for the designating party agrees in advance; or

17 g. As ordered by the Court, provided that such other persons have
18 signed a non-disclosure agreement in the form attached hereto as Exhibit A.

19 8. Confidential and Attorneys' Eyes Only Material shall be used only by
20 individuals permitted access to it under paragraphs 6 or 7. Confidential and
21 Attorneys' Eyes Only Material, copies thereof, and the information contained
22 therein, shall not be disclosed in any manner to any other individual until and
23 unless (a) outside counsel for the party asserting confidentiality consents to the
24 disclosure or waives the claim of confidentiality, or (b) the Court orders the
25 disclosure.

26 9. With respect to depositions during which there has been disclosure of
27 Confidential or Attorneys' Eyes Only Material, the party or third party designating
28 the material as Confidential or Attorneys' Eye Only Material shall have until thirty

(30) days after receipt of the deposition transcript within which to inform all parties that portions of the transcript are to be designated as Confidential Material or Attorneys' Eyes Only Material, which period may be extended by agreement of the parties. During the 30-day period, no deposition transcript containing Confidential Material or Attorneys' Eyes Only Material, and no contents of the Confidential Material or Attorneys' Eyes Only Material contained in the transcript, shall be disclosed to anyone other than (a) the individuals described in paragraphs 6.a, 6.b, 6.c, 6.d, and 6.f above with respect to Confidential Material, (b) the individuals described in paragraph 7 with respect to Attorneys' Eyes Only Material, and (c) the deponent. Upon being informed that certain portions of a deposition are to be designated as Confidential or Attorneys' Eyes Only, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with preceding Paragraphs of this Order.

10. Each person who signs the non-disclosure agreement attached hereto as Exhibit A shall be subject to the jurisdiction of this Court for purposes of any proceedings relating to compliance with or violation of this Order.

11. The recipient of any Confidential or Attorneys' Eyes Only Material subject to this Order shall maintain that material in a secure location and exercise at all times due and proper care to ensure the continued confidentiality of the material.

12. A party shall not be obligated to challenge the propriety of a Confidential or Attorneys' Eyes Only designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto at any time during this litigation. If counsel for a party receiving documents or information in discovery in this case objects to the designation of any of them as Confidential or Attorneys' Eyes Only Material, the following procedures shall apply:

a. Counsel for the objecting party shall serve on the designating

1 party or third party a written objection to such designation, which shall describe
 2 with particularity the documents or information in question and state the grounds
 3 for objection. Counsel for the designating party or third party shall respond in
 4 writing to the objection within ten (10) days (or more if agreed-upon by outside
 5 counsel), and state with particularity the grounds for asserting that the document or
 6 information is Confidential or Attorneys' Eyes Only Material. If no timely written
 7 response is made to the objection, the challenged designation will be deemed
 8 withdrawn. If the designating party or third party makes a timely response to such
 9 objection asserting the propriety of the designation, counsel shall then confer in
 10 good faith in an effort to resolve the dispute. If the designating party does not
 11 agree to de-designate the Materials in the designation objections and instead
 12 pursues the meet-and-confer process, the parties shall conduct the in-person meet
 13 and confer required by Local Rule 37 within ten (10) calendar days of the
 14 designating party's meet-and-confer letter.

15 b. If a dispute as to a designation as Confidential or Attorneys'
 16 Eyes Only Material cannot be resolved by agreement, the objecting party may
 17 present the dispute to the Court. If the objecting party elects to present the dispute
 18 to the Court, the objecting party shall thereafter serve the designating party with a
 19 joint stipulation pursuant to Local Rule 37 within seven (7) calendar days of the
 20 parties' in-person meet and confer session. The objecting party shall thereafter file
 21 the joint stipulation and related motion papers with the Court within two (2) court
 22 days of receipt of the designating party's portion of the joint stipulation, to seek
 23 relief from the Court to de-designate any or all designations on documents,
 24 testimony or information addressed by the designation objections (the "De-
 25 designation Motion"). Pending resolution of the dispute, the document or
 26 information that is the subject of the filing shall be treated as originally designated.

27 13. Documents containing Confidential or Attorneys' Eyes Only Material
 28 shall not be filed with the Court except as necessary, including without limitation

1 in support of motions and as trial evidence. Any such filings will be made in good
2 faith and not solely for an improper purpose such as harming, harassing or
3 embarrassing another party. All requests to seal documents filed with the Court
4 shall comply with L.R. 79-5.1.

5 14. If the need arises during a hearing to disclose publicly Confidential or
6 Attorneys' Eyes Only Material, the party seeking to make such disclosure shall do
7 so only after giving notice to the producing party and affording the producing party
8 the opportunity to oppose the disclosure, and only after permitted by the Court.
9 Any use of Confidential or Attorneys' Eyes Only Material at trial shall be
10 governed by the orders of the trial judge. This Order does not govern the use of
11 Confidential or Attorneys' Eyes Only Material at trial.

12 15. To the extent consistent with applicable law, the inadvertent
13 disclosure of Confidential or Attorneys' Eyes Only Material, regardless of whether
14 it was so designated at the time of disclosure, shall not be deemed a waiver of
15 confidentiality, either as to the specific material disclosed or as to any other
16 material or information concerning the same or related subject matter. The
17 inadvertent disclosure may be rectified by written notification, to counsel for all
18 parties to whom the material was disclosed and within a reasonable time after
19 disclosure, that the material should have been designated as Confidential or
20 Attorneys' Eyes Only Material. The written notification shall constitute a
21 designation of the material as Confidential or Attorneys' Eyes Only under this
22 Order.

23 16. When the inadvertent disclosure of any information, document or
24 thing subject to attorney-client, another privilege, or work-product immunity, is
25 discovered by the producing party and brought to the attention of the receiving
26 party, the receiving party's treatment of such material shall be in accordance with
27 Federal Rule of Civil Procedure 26(b)(5)(B). The inadvertent disclosure shall not
28 by itself constitute a waiver by the producing party of any claims of privilege or

1 work-product immunity. Nothing herein, however, herein restricts the right of the
2 receiving party to challenge the producing party's claim of privilege within a
3 reasonable time after receiving notice of the inadvertent disclosure.

4 17. In the event any receiving party having possession, custody or control
5 of any Confidential or Attorneys' Eyes Only Material receives a subpoena, request
6 for production of documents, or other process or order (the "Request") to produce
7 such material in another, unrelated legal proceeding, the receiving party shall (1)
8 give notice of the Request to counsel for the disclosing party or third party that
9 designated the material as Confidential or Attorneys' Eyes Only Material, (2)
10 provide a copy of the Request to counsel for the disclosing party or third party, and
11 (3) cooperate in all reasonable efforts of the disclosing party or third party to
12 oppose production of the material sought by the Request. The disclosing party or
13 third party making the designation as Confidential or Attorneys' Eyes Only
14 Material shall have the burden of defending against the Request. The party
15 receiving the Request shall be entitled to comply with it except to the extent the
16 disclosing party or third party making the Confidential or Attorneys' Eyes Only
17 Material designation obtains an order modifying or quashing the Request.

18 18. Nothing in this Order shall preclude any parties, third parties or their
19 attorneys from disclosing or using any material or documents from the party's or
20 third party's own files which the party or third party itself has designated as
21 Confidential or Attorneys' Eyes Only Material. No information that is in the
22 public domain, or which is already rightfully known by the receiving party, shall
23 be subject to this Order.

24 19. This Order shall not deprive any party of its right to object to
25 discovery by any other party or on any otherwise permissible ground. This Order
26 is being entered without prejudice to the right of any party to move the Court for
27 modification or for relief from any of its terms.

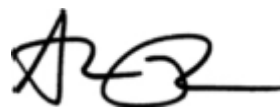
28 20. This Order shall survive the termination of this action and shall

1 remain in full force and effect unless modified by Court Order or the written
2 stipulation of the parties filed with the Court.

3 21. Within sixty (60) days of the termination of litigation between the
4 parties, including conclusion of all appeals and the expiration of time to appeal or
5 seek further review, each party or other person or entity subject to the terms hereof
6 shall assemble and to return to the producing party or third party all original and
7 unmarked copies of documents and things containing Confidential and Attorneys'
8 Eyes Only Material, and destroy, if the producing party so requests, all copies of
9 Confidential and Attorneys' Eyes Only Material that contain or constitute attorney
10 work product as well as excerpts, summaries and digests revealing Confidential
11 and Attorneys' Eyes Only Material; provided, however, that counsel may retain
12 one copy of all transcripts and pleadings, and any exhibits thereto, subject to the
13 provisions of this Order. If destroyed, counsel shall certify to the destruction and
14 provide a copy of the certification to the producing party or third party. To the
15 extent a party requests the return of Confidential and Attorneys' Eyes Only
16 Material from the Court after the final conclusion of the litigation, including the
17 exhaustion of all appeals therefrom and all related proceedings, the party shall file
18 a motion seeking such relief.

19 IT IS SO ORDERED.

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21 Dated: June 28, 2016



22 Hon. Sheri Pym
23 United States Magistrate Judge
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 KUSHTRIM ZYMBERI, Individually
12 And On Behalf of All Others Similarly
13 Situated,

14 Plaintiff,

15 v.

16 SPECTRUM BRANDS, INC. a/k/a
17 RAYOVAC,

18 Defendant.
19
20

Case No.: 5:15-cv-02351-DDP-SPx

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

Assigned to the Hon. Dean D.
Pregerson

21 I, _____, declare that:

22 1. My address is _____.

23 2. My present employer is _____ and the
24 address of my present employment is _____.

25 3. My present occupation or job description is
26 _____.

27 4. I have carefully read and understood the provisions of the Protective
28

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

1 Order the Court has entered in this case, and I will comply with all of its
2 provisions.

3 5. I will hold in confidence and not disclose to anyone not authorized by
4 the Protective Order any Confidential Material or Attorneys' Eyes Only Material
5 disclosed to me, or any summaries, abstracts, indices, descriptions, discussions, or
6 other documents or communications containing or describing Confidential
7 Material or Attorneys' Eyes Only Material disclosed to me.

8 6. I will limit use of Confidential Material and Attorneys' Eyes Only
9 Material disclosed to me solely for purposes of this case.

10 7. I agree to subject myself to the jurisdiction of this Court for the
11 purpose of any proceedings relating to compliance with or violation of the
12 Protective Order.

13 8. Within sixty (60) days of the final conclusion of the case, I will return
14 all Confidential Material and Attorneys' Eyes Only Material and summaries,
15 abstracts, and indices thereof which come into my possession, and documents or
16 things which I have prepared relating thereto, to counsel for the party who
17 disclosed the Confidential Material or Attorneys' Eyes Only Material to me.

18 I declare under penalty of perjury that the foregoing is true and
19 correct.
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21 Date: _____

22 [Name]
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Electronic Service List for this Case.

Dated: June 23, 2016

WILLENKEN WILSON LOH &
DELGADO LLP

By: /s/ Eileen M. Ahern

Eileen M. Ahern
Attorneys for Defendant
Spectrum Brands, Inc.